

2009 Changes to the Lanterman Act: What They Are & How to Appeal Cuts in Services

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Developed by Developmental Disabilities Area Board 10

Background

- Our current budget mess as it relates to regional centers:
 - Governor's initial proposal: \$334 million cut
 - Based on a “flat” budget allocation – meaning, same amount as last year even though this year, more people are eligible for regional center services.
- \$100 million cut – approved
- \$234 million cut – partially approved
 - Awaiting final legislative approval – anticipated approval within weeks

Regional Centers

- Brief background
- Role
- IPP/IFSP development process
 - Notice of Proposed Action (NOPA) -- Timelines
 - Does there need to be an IPP/IFSP meeting before regional center changes my services?
- Appeals procedure: fair hearings
 - The process
 - Previous typical strategies to appeal regional center decisions
 - New strategies needed to appeal regional center decisions

Changes to the Lanterman Act

- Changes have been made in the following areas
 - Early Start Services
 - Non-Medical Services and Therapies
 - General Standards
 - Other Services and Supports
 - Some New Exciting Options

Changes to Early Start Services

- Eligibility is restricted
- “High risk” infants and toddlers will no longer be eligible for Early Start
 - Will be eligible for a new state-funded program
 - Limited to case management and information & referral to other agencies
 - Appeal Strategies: No basis for appeal unless child can qualify in another category, e.g., has an “established risk condition”

Changes to Early Start Services

- To qualify for Early Start services under the category of having a developmental delay:
 - If the child is under 24 months, the delay must be at least 33% in one developmental area
 - If the child is over 24 months, the delay must be 50% in one developmental area or 33% in two areas
- Appeal Strategies: Ensure thorough and accurate assessments to document nature and extent of delays

Changes to Early Start Services

- Regional centers will no longer fund services that are not required by the federal government
 - Day care
 - Respite
 - Other family support services
 - Most medical services, except for durable medical equipment
- Appeal Strategies: None under Early Start Program
 - Can access these services if child is qualified as eligible for services under state Lanterman Act

Changes to Early Start Services

- Priority will be given to funding integrated neighborhood preschools rather than specialized infant development programs established for children with special needs
 - Appeal Strategies: Must be able to document that child's needs can only be met by utilizing an infant development program

Changes to Non-Medical Services & Therapies

- **Access to In-Home Behavioral Intervention services will be limited**
- In-home behavioral services will be available only if parents complete group instruction prior to regional center agreeing to fund in-home behavioral services
 - This requirement applies to children served under Early Start as well as under the Lanterman Act
 - Appeal Strategies: Document why group instruction will not adequately address the problem. For example: the child's maladaptive behaviors pose potentially dangerous consequences (self-injury, running away, danger to younger sibling, etc.). May need to document that delay in convening the class is unacceptable, the lack of classes in parent's primary language, inability of parent to benefit from classroom instruction.

Changes to Non-Medical Services & Therapies

- **Camp services, social recreation services, educational services and nonmedical therapies (art, music, equestrian, aquatic, gymnastics) are being “suspended”** – meaning regional centers will no longer fund these services but the state “may” reinstate funding at some time in the future
 - Appeal Strategies: An exception may be made when:
 - “the service is a primary or critical means for ameliorating (improving) the physical, cognitive, or psychosocial effects of the consumer’s developmental disability” **OR**
 - the service is essential to maintaining the person in his home and no other alternative service is available
 - Additionally, in some cases may be possible to redefine the service as medical in nature – for example, aquatic therapy in some cases serves as a physical therapy modality for people with cerebral palsy. Recommend getting physician documentation.

Changes to Non-Medical Services & Therapies

- **Respite Services will be limited**
 - Out of home respite will be limited to a maximum of 21 days per year
 - In-home respite will be limited to a maximum of 90 hours per quarter (30 hours per month)
- Appeal Strategies: An exception may be made if one of the following applies:
 - “the intensity of the consumer’s care and supervision needs are such that additional respite hours are needed to maintain the consumer in the family home” **OR**
 - “there is an extraordinary event that impacts the family member’s ability” to care for the consumer

Changes to General Standards

- **The least costly provider who can deliver the needed service shall be used** unless it is a more restrictive or less integrated service than currently utilized
 - Appeal Strategies: Must be able to document that the proposed provider cannot accomplish the goals identified in the IPP or properly address the needs. May need to demonstrate that the proposed provider does not have appropriate training, language capacity, peer group, physical site needs or other specifics that apply to the particular consumer. (Note: definition of “least costly” includes cost of transportation.)

Changes to General Standards

- **Regional centers cannot fund experimental or unproven therapies or devices**
 - Appeal Strategies: Must demonstrate that the requested service is not experimental, that there is a body of peer-reviewed evidence of its effectiveness

Changes to General Standards

- **Regional centers may not pay for medical or dental care if alternative coverage is available** (Medi-Cal, Medicare, CHAMPUS, private insurance, CCS, IHSS), but chosen not to be used. This also applies to children served under Early Start.
 - Appeal Strategies: Regional centers can require the consumer to appeal a denial from one of these alternative insurers unless they determine that the appeal has no merit. Accordingly, one should document how the requested service/treatment is clearly outside the accepted coverage available from the insurer. (Note: the new language does not require consumers to exhaust every existing generic resource if they clearly do not qualify for the requested service.)

Changes to Other Services & Supports

- **Access to IHSS hours will be limited.** Some people who were previously receiving IHSS hours for domestic services may lose those hours. Some people whose disability is mild to moderate may lose all IHSS hours. Anyone who is receiving 120 hours or more of IHSS per month or who is receiving protective supervision will be exempt from any cuts.
- **SSI/SSP monthly checks are being reduced to the federal minimum, \$830 for a single person and \$1,407 for couples**
 - Regional centers are expected to provide funding to make up for this reduction, but only for those who are in supported or independent living

Changes to Other Services & Supports

- **Adults who receive Medi-Cal are losing coverage for “optional benefits.”**
These include:
 - All dental care
 - All optometry – eye exams, eyeglasses, contact lenses
 - Mental Health Services/Psychology – visits to therapist
 - Audiology – hearing aids
 - Podiatry – foot care
 - Incontinence supplies
 - Acupuncture
 - Speech therapy
 - Chiropractic services
- Appeal Strategies: As the payer of last resort, ***regional centers are required to purchase the above services when they are not otherwise available.*** The Department of Developmental Services (DDS) secured additional funds from the Legislature to cover these services – \$7.65 million for dental care; \$4.3 million for the other Medi-Cal benefits; \$20.2 million to replace lost IHSS hours; and \$20.4 million to SSI/SSP recipients who live independently.

Some Exciting New Options

- DDS/regional centers will be introducing an **Independent Choice Budget model** to offer consumers the option of self-directing their own services within a reduced, finite budget amount. Stay tuned for information about this plan which will probably roll out in 2010.
- DDS/regional centers will be introducing a **“Custom Endeavors Option”** which is intended to promote employment for people who would otherwise be steered to day programs.

Who Can I Turn to for Help?

- Your regional center clients' rights advocate
 - 800/390-7032 to find out who your CRA is
- Your Local Area Board
 - XXX/XXX-XXXX
- Disability Rights California (formerly PAI)
 - www.disabilityrightsca.org
 - 800/776-5746
- Your local legislator
 - www.leginfo.ca.gov/yourleg.html

Where Can I Get More Information?

- State Council on Developmental Disabilities
 - www.scdd.ca.gov/Area_Boards.htm
- CA Disability Community Action Network (CDCAN) – www.cdcan.us
 - You can sign up for free, informative newsletters
- Rights Under the Lanterman Act
 - disabilityrightsca.org/pubs/506301index.htm
- Other useful publications
 - disabilityrightsca.org/issues/services_pubs.html
- Disability Rights California (formerly PAI)
 - www.disabilityrightsca.org